

FY 2005 Supplemental Requirements of the Judiciary
\$101.8 Million

Impact of the *Booker/Fanfan* Decisions – \$91.3 million

The Supreme Court's recent twin majority opinions in *United States v. Booker* and *United States v. Fanfan* (*Booker*), making the U.S. Sentencing Guidelines advisory and certain enhancements to the Guidelines unconstitutional, are projected to raise costs for the judiciary by an estimated \$91.3 million. In addition to increased workload associated with pending and new cases, a significant number of inmates will likely seek relief by asking the district and appellate courts to reconsider their sentences imposed pre-*Booker*.

Court Requirements: (\$30 Million)

District Courts

- As a result of remands from the courts of appeals, many resentencing hearings will occur in district courts. Court personnel will have to process filings for these hearings, give notice of them, coordinate transportation for defendants, and attend them. Probation officers will likely revise presentence reports for these hearings. The hearings will also involve additional costs for interpreters and court reporters. After each hearing, preparation and processing of a new Judgement and Commitment order and forwarding of sentencing information to the United States Sentencing Commission will be required.
- Anticipated increased direct criminal appeals will have an impact on the work in the district courts, where clerks will have to process notices of appeal; prepare case files for certification to the court of appeals; process motions prior to appeal; review and process transcript order forms and Criminal Justice Act payment forms; monitor, receipt and file transcripts in the original case file; mail or deliver original or supplemental case file documents to the court of appeals; and process the record once returned from the court of appeals.
- It is estimated that 12,000 to 18,000 new filings could be lodged under 28 U.S.C. §2255, attacking an original sentence and asking the district court which imposed the sentence to vacate, set aside, or correct the sentence. These filing estimates are based on the Bureau of Prisons population, reduced for the inmates who already received reduced sentences under 5K1.1 (substantial assistance departure), inmates with less than six months to serve, and inmates who received no enhancements. These new filings, in addition to requiring judge time, require that pro se law clerks process prisoner-prepared motions, and that district court clerks open new case filings, docket the pleadings and motions, revise and process amended or revised Judgment and Commitment forms, and process any subsequent appeals to the appellate courts.

Courts of Appeals

- Appellate courts are faced with some 400 cases already remanded to them by the Supreme Court after *Booker*. In addition, *Booker* has generated new filings and additional briefing in criminal cases pending before the appellate courts at the time of the *Booker* decisions, thus requiring additional work for clerk's offices in processing filings initiated by the parties and in requesting and processing additional briefing requested by the court.
- The appellate courts have already seen a trend in the increase in case filings since the Supreme Court decisions in *Booker*, particularly in direct criminal appeals, and second or successive habeas petitions filed under 28 U.S.C. §2244. The appellate courts also have reported increases in motions to vacate, set aside, or correct sentences filed pursuant to 28 U.S.C. §2255. Both the appellate clerks' offices and staff attorneys' offices will be directly affected by an increase in workload, from increased case filings and from the complexity of issues presented for consideration by the courts. The work performed by clerks' office staff includes receiving, docketing, screening and distributing new cases and motions filed. The increased caseload could also impact the clerks' calendaring responsibilities, to schedule additional panels of judges to decide these cases. The appellate court staff attorneys are a centralized legal staff. A primary focus of their work is on pro se prisoner cases, including direct criminal appeals, particularly cases involving sentencing guidelines.

Defender Services: (\$60 Million)

- Pre-*Booker*, the discretion of the court to consider sentencing factors was limited. Post-*Booker*, courts still must calculate a sentence under the Guidelines, which are now advisory, and "shall consider" the congressionally mandated purposes of sentencing set forth in 18 U.S.C. § 3553(a). For sentencing and re-sentencing, defense counsel now must spend additional hours advising clients on possible sentences, investigating the defendant's history and the circumstances of the offense, and litigating new legal issues.
- For defendants whose appeals have been completed, federal habeas corpus proceedings provide a vehicle for raising *Booker* claims. It is anticipated that in the near future court decisions will determine the extent to which the *Booker* decision applies to such cases. Because of this uncertainty, funding for *Booker* habeas cases was deeply discounted in estimating Defender Services *Booker* costs. *Booker* habeas cases that are litigated, however, will require significant additional work beyond what otherwise would be necessitated in a pending case.
- Defense counsel will have to locate all of the court filings related to the case; review the file, which could range from one hundred to several thousand pages; meet with the lawyer who represented the defendant at sentencing, review the lawyers' files related to

the client. They will also have to meet with the client, which can be quite time consuming, since convicted defendants may be held in any federal prison in the country. In many instances, substantial time and travel costs will be associated with a client visit. Based on the results of the preceding tasks, counsel must determine the need for a transcript and, if necessary, locate the court reporter and order a transcription of the sentencing hearing. The court reporter's fee for transcription will be reimbursed pursuant to the Criminal Justice Act.

Federal Judicial Center: (\$0.4 Million)

- Funding will support an additional sentencing institute to provide education and training to judges, as well as provide additional education and training workshops to help district and appellate judges, probation officers, federal defenders, and other court personnel carry out their duties under the new sentencing regime. It is expected that case law will evolve quickly and the Center will be required to help judges and staff stay abreast of it. The Center's education programs will also transmit "lessons learned" that will emerge as district judges use varying approaches to the sentencing function consistent with *Booker*, with any additional Supreme Court decisions and courts of appeals decisions interpreting *Booker* (including retroactivity), and with amendments to the sentencing guidelines which judges still must consider in imposing sentence.

United States Sentencing Commission: (\$0.9 Million)

- The Commission will use this funding to maintain a national sentencing dataset in "real time" to monitor the impact of the recent Supreme Court decision in *Booker*. This would include the hiring of temporary staff and/or a contractor so that case files will be timely processed, including data entry, quality assurance controls, and the reporting of the information. A portion of this funding also will be used to support the expansion of a pilot program for the electronic submission of data to the Commission.

Impact of S. 5, The Class Action Fairness Act of 2005 – \$10.5 Million

Enactment of the Class Action Fairness Act of 2005 will require most class action lawsuits to be heard in a federal district court rather than a state court. The Congressional Budget Office estimates that about 300 additional class action cases would be heard in federal court each year. Complex class action litigation imposes costs of about \$23,000 per case on the federal district court system, covering the costs of salaries and benefits for additional clerks, rent, records space, utilities, and associated overhead expenses relating to the filing and processing of these cases. This legislation also requires the Judicial Conference of the United States to report to the Congress on class-action settlements no later than one year after the bill's enactment. The Class Action Fairness Act of 2005 will become effective upon enactment.